

# Buy American Act

**Applies to:**

All grants and cooperative agreements

## Definition

The Buy American Act applies to all U.S. federal government agency purchases of goods valued over the micropurchase threshold, but does not apply to services. Under the Act, all goods for public use (articles, materials, or supplies) must be produced in the U.S., and manufactured items must be manufactured in the U.S. from U.S. materials.

## Background

The Buy American Act is the major domestic preference statute governing Federal government procurement. Congress enacted the Buy American Act in 1933 and has only substantively amended the Act four times in the succeeding years. The first amendment was the Buy American Act of 1988 and expired on April 30, 1996. The second amendment in 1994 added the purchase threshold of \$2,500. The third amendment is specific to the Department of Defense and the fourth amendment requires all Federal agencies to report purchases from foreign sources.

As a note, while the Act appears to control most procurements of the Federal government, other legislation or international agreements may control the application of the Act. For instance, Article 1004 of The North American Free Trade Agreement (between the United States, Mexico, and Canada) disallows domestic protection legislation, such as the Buy American Act, in government procurement.

There are exceptions to the Buy American Act. The five primary exceptions are:

1. When the application of the Act would be inconsistent with the public interest,
2. When the application of the Act would result in unreasonable cost,
3. When products are procured for use outside the United States,
4. When products are not produced or manufactured in the U.S. in sufficient and reasonably available commercial quantities and of satisfactory quality, and
5. Procurements under \$2,500.

The American Recovery and Reinvestment Act did not amend the Buy American Act, but it did include a provision attaching domestic content considerations to the funds disbursed under the Plan.

## Authorities

- Buy American Act (March 3, 1933), as amended, 41 U.S.C. 10a – 10c.
- Energy and Water Development Appropriation Act, 1994, Public Law 103-126, section 502 and 503
- Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1994, Public Law 103-138, section 310
- Energy and Water Development Appropriation Act, 1994, Public Law 104-206, section 501
- Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1994, Public Law 104-208, section 307

## The Buy American Act and DOI

The Buy American Act primarily governs direct Federal purchases. Requirements for Buy American Act for assistance programs was added through the Federal Register (59 FR 36715) on July 19, 1994 and amended 43 CFR Part 12 to add Subpart E—Buy American Requirements for Assistance Programs, §12.700 – 730.

The 1994 addition implements section 310 of the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1994 (P.L. 103-138) and section 502 of the Energy and Water Development Appropriation Act, 1994 (P.L. 103-126).

On December 30, 1996 the Department issued through the Federal Register (61 FR 68666) an update to Subpart E. This update reflects the changes that Congress established through Section 501, Public Law 104-206 (Energy and Water Development Appropriations Act of 1997) and Public Law 104-208 (Department of the Interior and Related Agencies Appropriations Act of 1997).

## Conclusion

Unless applied directly to a grant program or an appropriation by a congressional act, the Buy American Act does not apply to grants and cooperative agreement.

According to a Controller General opinion, the Buy American Act does not apply to federal grants (57 Comp. Gen. 85 (1977)); funds are not subject to federal agencies' restrictions on salary payments and travel expenditures (16 Comp. Gen. 948 (1937)).

Section 501, PL 104-206:

***This law only applies to awards through the Energy and Water Development Appropriations Act of 1997 made by the Bureau of Reclamation***

Section 307, P.L. 104-208:

***This law is specific to grants through the Department of the Interior and Related Agencies Appropriations Act for the fiscal year ending September 30, 1997***

*Note: Do not confuse the Buy American Act with The Buy America Act which is a different provision and applied only to transit-related procurements valued over \$100,000, for which funding includes grants administered by the Federal Transit Authority (FTA) or Federal Highway Administration (FHWA).*

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